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SUPREME COURT, U.S.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1955

No. 736

In the Matter of the Application of
EUGENE BURWELL,
For a Writ of Habeas Corpus.

ON CERTIFICATE OF QUESTIONS
FROM THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO, CALIFORNIA

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

In the Matter of the Application of EUGENE BURWELL, For a Writ of Habeas Corpus.	Misc. No. 502

CERTIFICATION OF QUESTIONS BY THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

To the Honorable the Chief Justice and the Justices of the Supreme Court of the United States:

For the reasons stated in the Matter of the Application of JAMES ALONZO ROGERS for a Writ of Habeas Corpus, Misc. No. 462, the United States Court of Appeals for the Ninth Circuit certifies to the Supreme Court of the United States the following three questions as to its jurisdiction:

(1) HAS CONGRESS CREATED IN THE COURT OF APPEALS, AS A COURT, THE JURISDICTION TO ISSUE A CERTIFICATE OF PROBABLE CAUSE SOUGHT FROM THE COURT, AS A COURT, BY THE PROVISIONS OF 28 U.S.C. §2253, REPLACING THE REPEALED 28 U.S.C. §466?

(2) IF THE SUPREME COURT HOLDS THAT CONGRESS HAS NOT GIVEN THE

COURTS OF APPEAL SUCH JURISDICTION, DID THE SUPREME COURT CREATE THAT JURISDICTION, BY ITS PER CURIAM OPINION, RENDERED WITHOUT ARGUMENT, WHICH FAILED TO CONSIDER 28 U.S.C. §2253 AND WAS BASED ON THE REPEALED 28 U.S.C. §466 AND HOUSE v. MAYO, 324 U.S. 42, 48 (1945), AND ITS REMAND TO THIS COURT "SO THAT THE PETITIONER'S APPLICATION FOR A CERTIFICATE OF PROBABLE CAUSE MAY BE ENTERTAINED ON ITS MERITS"?

(3), IF THE SUPREME COURT HOLDS THAT CONGRESS OR THE COURT CREATES SUCH JURISDICTION BY 28 U.S.C. §2253 AND THAT HOUSE v. MAYO APPLIES, DOES ITS MANDATE MEAN THAT ALL THE JUDGES, AS JUDGES, OR SOME INDIVIDUAL JUDGE, OR THE COURT AS A COURT SHALL CONSIDER THE PETITION FOR A CERTIFICATE OF PROBABLE CAUSE?

WHEREFORE, the United States Court of Appeals for the Ninth Circuit prays that the above questions be answered.

William Denman
Chief Judge

Homer T. Bone
Circuit Judge

(Endorsed:) Certificate of Questions to the Supreme Court of the United States. Filed Febr. 15, 1956. Paul P. O'Brien, Clerk.

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